

Internal Revenue Service  
**memorandum**

TR-45-490-91

CC:IT&A:03:CJJacobs

date: APR 12 1991

to: District Counsel, [REDACTED]

from: Assistant Chief Counsel (Income Tax and Accounting)

subject: Request for review of opinion on deductibility of  
contributions under I.R.C. section 170

This memorandum responds to your request for review of an opinion prepared by your office regarding the deductibility of contributions for missionaries under two different procedures used by the [REDACTED]. The Chief, Examination Division, [REDACTED], requested your legal advice on these issues so that classification and examination guidelines could be addressed in the light of the Supreme Court decision in Davis v. United States, 495 U.S. [REDACTED], 109 L.Ed. 2d 457 (1990), [REDACTED].

In this memorandum, we address the deductibility of contributions made under the "[REDACTED]" which was in effect from [REDACTED] through [REDACTED]. The deductibility of contributions made under the "[REDACTED]", instituted as of [REDACTED], will be addressed in a separate response. Because our conclusion about the deductibility of contributions made under the [REDACTED] differs from your conclusion, we are providing our analysis of the issue but using, with minor changes, your statement of the facts and your definitions.

As background information, we met with officials of the Church and their legal representatives about this issue on [REDACTED]. At that meeting, we explained our view that contributions under their [REDACTED], then in use, were generally not deductible under section 170 of the Internal Revenue Code. This meeting was a presubmission conference (preparatory to the Church's possible submission of a private ruling request) in which the Church officials said that the Church was seriously considering changing their funds solicitation approach for supporting missionaries. The changes described to us are very like the "[REDACTED]" put into use by the Church on [REDACTED]. We advised the Church that we did not have a position about deductibility under their then proposed program but that we would be very willing to consider a ruling request on the issue. We were later advised by the Church's representatives that a ruling would be requested

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District Counsel, [REDACTED]

regarding the deductibility of contributions under their new program, but such a ruling request has not yet been received.

Because our view of general nondeductibility for contributions under the Church's [REDACTED] might lead to litigation, we met with representatives of the Office of Assistant Chief Counsel (Tax Litigation) to discuss the issue. Tax Litigation agreed with our conclusion that generally such contributions were not properly deductible and indicated that they were willing to litigate the issue. The Chief, Examination Division, [REDACTED], attended this meeting and advised that the Church had decided to change its [REDACTED] program.

#### CONCLUSION

Our conclusion about contributions made under the "[REDACTED]" in effect from [REDACTED] through [REDACTED] was, and continues to be, that they are generally not properly deductible because the payments are made by the donor and received by the Church with the very clear understanding of both that the payments will be given to the missionary on whose behalf the funds were solicited. Only when facts and circumstances show that contributions to the fund were not made with such an understanding can the contributions be properly deductible. Contributions under the [REDACTED] made with the understanding that they would be passed on to the missionary on whose behalf they were solicited are not substantially different from contributions directly from donors to missionaries that the Supreme Court held not to be deductible in Davis v. United States, supra.

#### DEFINITIONS

As a matter of convenience, we use the following definitions relative to this case:

1. Church: [REDACTED];
2. [REDACTED];
3. [REDACTED];
4. [REDACTED];
5. [REDACTED];

District Counsel, [REDACTED]

6. Mission: An ecclesiastical unit whose geographical area may include [REDACTED], but its principal responsibility is the missionary work of approximately [REDACTED] missionaries. A Mission is administered independently of the [REDACTED];

7. [REDACTED]: Ecclesiastical leader with the responsibility of supervising the individual missionaries within the mission. The [REDACTED]'s responsibilities include all aspects of operating the Mission, including payment of Mission expenses and control of all moneys which may come into the Mission financial accounts.

#### FACTS

The facts upon which we rely for our opinion in this case are the following:

The Church is recognized by the Internal Revenue Service as an organization eligible to receive tax deductible charitable contributions under I.R.C. section 170. The Church conducts a [REDACTED] program with over [REDACTED].

Missionaries of the Church are [REDACTED] years of age. All missionaries are expressly ordained or "ordained" as official representatives of the Church. The missionaries are not self-appointed and their missionary service experience is neither intended nor conducted for their personal benefit. It is the objective of the Church to send missionaries to preach the gospel and convert new members to the Church. The missionaries [REDACTED] and are supervised in their proselytizing efforts by a [REDACTED] to whom the missionaries send regular reports.

[REDACTED], they are interviewed as prospective missionaries and instructed to complete a series of forms indicating their background. A recommendation is then prepared by the [REDACTED] and submitted to the [REDACTED]. If approved by the [REDACTED], the recommendation is forwarded to Church headquarters. Based upon the needs of the Church, the prospective missionary is "assigned" to a specific mission. This "assignment" is issued directly to the prospective missionary by ecclesiastical leaders from the Church headquarters.

Before the [REDACTED] is received, prospective missionaries and [REDACTED] are interviewed by the [REDACTED] to be given general instructions and determine how financial support will be provided

District Counsel, [REDACTED]

for the term of the mission, generally [REDACTED]. The missionaries and [REDACTED] are asked to provide support equal to, but not exceeding, the average cost of the mission. If the missionary is unable to provide the [REDACTED] and if the [REDACTED] are unable or unwilling to provide the [REDACTED], the [REDACTED] will solicit funds from other members of the [REDACTED] or from other sources available to him. The Church has stated that, while it is expected that the [REDACTED] will contribute to the cost of that mission as part of the [REDACTED], prospective missionaries are not denied the opportunity to serve as missionaries because [REDACTED] to the missionary effort.

Prior to [REDACTED], [REDACTED] and other donors made payments directly to the missionaries for their support. In [REDACTED], the Church established procedures involving the creation of a [REDACTED] fund in the [REDACTED] to finance expenses of its missionaries. This procedure was called the "[REDACTED]" by the Church and was an alternative to making payments directly to a missionary. Under the [REDACTED], some donors, including [REDACTED], made donations directly to the [REDACTED] fund rather than directly to the missionary.

This fund was administered by the [REDACTED], who was advised by the Church every [REDACTED] of the average cost for a missionary in the mission where the missionary "[REDACTED]" from the [REDACTED] was serving. The [REDACTED] for the [REDACTED] also advised the [REDACTED] if the amount being sent to the missionary for monthly expenses needed to be adjusted. Each month the [REDACTED] or other donors, would make a donation to the [REDACTED] fund. The [REDACTED] would then write a check and send it to the missionary or would deposit funds to the missionary's bank account. Usually, the amount sent to the missionary by the [REDACTED] was the same amount which had been donated to the [REDACTED] fund by the [REDACTED] or by other persons who had been solicited to provide funds for that missionary.

The amounts donated for support of the missionary were reflected on a year-end "statement of contributions" given to the donor by the [REDACTED]. Generally, the donors discontinued or reduced the amount of their contributions to the [REDACTED] fund once the missionary returned from the mission.

#### ISSUE

Does a donation made under the "[REDACTED]" qualify as a deductible contribution under I.R.C. section 170?

District Counsel, [REDACTED]

### LEGAL DISCUSSION

Pursuant to I.R.C. section 170(a), (b) and (c), an individual taxpayer is entitled to a deduction for charitable contributions or gifts to or for the use of qualified charitable organizations including churches.

After a series of differing court decisions, the question whether Mormon parents could deduct contributions made directly to their missionary children was decided unanimously by the United States Supreme Court in Davis v. United States, 495 U.S. (1990). The Court held that the payments from the parents to their missionary sons were not deductible contributions.

In Davis, the Church of Jesus Christ of Latter-Day Saints requested that missionaries or their parents provide the amount of money that the Church estimated was necessary to support the missionary service. Generally a missionary's parents provided the necessary funds to support their son or daughter during the missionary service. If the parents were unable to do so, the Church would locate another donor from the local congregation or use money donated to the Church's general missionary funds. The Church believed that having individual donors send the necessary funds directly to the missionary benefited the Church in several important ways. Specifically, it "fosters the Church doctrine of sacrifice and consecration in the lives of its people" as well as reducing the administrative and bookkeeping requirements which would otherwise be imposed upon the Church. 495 U.S. at .

Through written guidelines, the Church instructed missionaries that the money they received be used exclusively for missionary work. In accordance with the guidelines, the donors' sons in Davis used the money primarily to pay for rent, food, transportation, and personal needs while on their missions. 495 U.S. at .

The Supreme Court in Davis concluded that the payments from the parents to their sons were not "for the use of" the Church as defined in section 170(c). The parents' argued that "for the use of" should be read to include funds given directly to the missionaries where there was a high degree of supervision of the use of such funds by mission leaders to verify that missionaries were using the funds for missionary work. The government argued that "for the use of" was added to the statute in response to the Internal Revenue Service position that a charitable contribution was not allowable for a donation to a trust for the benefit of a charitable organization. The statute was amended to specifically make such donations in trust deductible, and the Service almost immediately interpreted the phrase as intended to convey a similar meaning as "in trust for." The Court found that the

District Counsel, [REDACTED]

Service's longstanding interpretation was both consistent with the statutory language and fully implemented Congress' apparent purpose in adopting it. Accordingly, the Court held that a gift or contribution is "for the use of" a qualified organization when it is held in a legally enforceable trust for the qualified organization or in a similar legal arrangement. 495 U.S. at .

The Supreme Court in Davis also concluded that the payments from the parents to their sons were not contributions "to" the Church under Treas. Reg. section 1.170A-1(g). The parents argued that this regulation allows the parents to claim deductions for their sons' unreimbursed expenditures incident to their sons' contribution of services to the Church. The Court disagreed on the basis that this argument was inconsistent with the plain language of the regulation that taxpayers may claim deductions only for expenditures made in connection with their own contributions of services to charities. 495 U.S. at .

The factual situation in Davis is significantly the same as in the [REDACTED] situation except that the payments Church [REDACTED] are asked to make to support [REDACTED] while on a Church mission are made to a [REDACTED] fund in the [REDACTED] and then are sent on, usually in the same amount, to the missionary. The Church's attorneys argue that because the [REDACTED] payments are made to the Church's [REDACTED] fund, the Church has control over the payments and, thus, the payments are charitable contributions to the Church and are deductible by the [REDACTED].

We disagree with this argument because the payments are solicited and received by the Church and made by the [REDACTED] with the understanding that the payments will be sent (and the payments, in fact, are sent) on to the missionary [REDACTED]. In other words, the church makes a commitment to

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<sup>1</sup>. Prior to our meeting with Church representatives, their attorneys sent us a [REDACTED] letter and documents to help us understand the manner in which the Church solicited contributions to finance its missionary program. We are sending a copy of the letter and documents with this memorandum.

Two of the documents are entitled "[REDACTED]"

Both indicate the conduit nature of the Church's holding of the [REDACTED] contribution, but the updated version with the [REDACTED] letter (number 6) appears very clear in 8: "Donated amounts that exceed one month's support should not be sent to the missionary nor returned to a donor, but should be retained in the [REDACTED] fund to be disbursed as needed on a monthly basis."

District Counsel, [REDACTED]

[REDACTED] on a mission that when the [REDACTED] make the requested payment to the [REDACTED] fund, the Church will have the payment sent on to [REDACTED] so that [REDACTED] can pay the [REDACTED]'s expenses while on the mission. We do not think the Church has control over funds that it has committed itself to send on to the donors' [REDACTED]. Thus, we conclude that the Church in fact does not have control over the payments but instead is acting as a conduit from [REDACTED]. Under these circumstances, the fact that payments are made to the Church does not make them different from the payments in Davis and, therefore, under that case the payments are not deductible charitable contributions.

The relevant published Service position on this issue is Rev. Rul. 62-113, 1962-2 C.B. 10. Rev. Rul. 62-113 concerns three issues, one of which is relevant here. That issue is whether contributions to a church missionary fund by the parent of a missionary are deductible under section 170. The facts in Rev. Rul. 62-113 must be carefully considered because, although very similar to the factual situation under consideration in a number of respects, they are also dissimilar in several important aspects.

In Rev. Rul. 62-113, the work of a local congregation in the field of missions is carried on by missionaries who are specially called from the congregation to devote their full time to missionary service for a period of specified duration and who are ordained for this purpose. The congregation has a number of missionaries presently serving missions in various parts of the world on a voluntary, noncompensated basis. Some of the missionaries are supported in whole or in part by their parents, some pay their expenses from their personal savings, and some have their traveling and living expenses entirely or partially reimbursed or paid from a church fund maintained for the purpose.

The local congregation, through the contributions of its members, maintains the fund and members are encouraged to make personal contributions to the fund. All contributions to the fund are expended in pursuance of the purposes of the fund and no part thereof is earmarked for any individual.

From this fund, missionaries are reimbursed for certain qualified living and traveling expenses incurred in the service

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Any amount not expended for the support of a particular missionary at the time of his release should be retained in the [REDACTED] Fund for the support of other missionaries or missionary purposes or should be remitted to the [REDACTED] Fund."

District Counsel, [REDACTED]

of the church where such expenses are not covered by amounts received by the missionaries directly from their parents, from relatives or friends, or from their own savings. In order to justify reimbursement for his expenses, each missionary is required to submit a monthly report listing his receipts and expenses and in no case is the fund to supply amounts greater than the reports can validate.

The taxpayer's son is one of the missionaries from the local congregation. The son's support is from (1) amounts provided by the taxpayer and (2) the reimbursements of living and traveling expenses made to him by the church from the fund. Although the taxpayer made contributions to the church fund after the son became a missionary, he had done so over a period of years before his son's departure for the mission and he contemplates continuing to do so.

The reasoning of Rev. Rul. 62-113 is, if contributions to the missionary fund are earmarked by the donor for a particular individual, they are treated, in effect, as being gifts to the designated individual and are not deductible. However, a deduction will be allowable where it is established that a gift is intended by the donor for the use of the organization and not as a gift to an individual.

Rev. Rul. 62-113 states that the test in each case is whether the organization has full control of the donated funds, and discretion as to their use, so as to insure that they will be used to carry out its functions and purposes.

In the revenue ruling, the son's receipt of reimbursements for the fund is alone insufficient to require a holding that this test is not met. Accordingly, unless the taxpayer's contributions to the fund are distinctly marked by him so that they may be used only for his son or are received by the fund pursuant to a commitment or understanding that they will be so used, they may be deducted by the taxpayer in computing his taxable income in the manner and to the extent provided by section 170 of the Code.

In contrast to the situation in Rev. Rul. 62-113, payments under the [REDACTED] by [REDACTED] to a [REDACTED] fund of the [REDACTED]

"[REDACTED]" used only for [REDACTED]. Also in contrast to the situation in the revenue ruling, funds for [REDACTED] missionary funds, as we were advised by Church representatives, are not solicited generally from the local congregation but rather are solicited mainly [REDACTED]. Thus, usually [REDACTED] contribute to [REDACTED]

District Counsel, [REDACTED]

[REDACTED] missionary fund only when [REDACTED]  
[REDACTED]  
[REDACTED].

You have provided us with a copy of a letter from the Church's attorneys to the Church leaders giving their opinion that monies donated under the [REDACTED] are deductible. Since some of the authority cited in the letter may again be raised by the Church, we will address it in this memorandum. We believe that almost all of the authority cited by the Church's attorneys can either be distinguished from the factual pattern present here or has been overruled by Davis.

Of the cases and other authority relied on by the Church attorneys, the case they are most likely to raise in support of the [REDACTED] is Peace v. Commissioner, 43 T.C. 1 (1964). In that case, donations were made to a nondenominational mission with the names of specific missionaries noted on the checks. The court in Peace made a specific factual finding that despite the names on the checks, it was the intention of the donor that the funds be donated to the common fund of the mission to be used as the mission saw fit.

In Peace, a substantial portion of the mission's income was raised through nationwide visitations, which were made by missionaries on furlough from their individual mission posts, outlining their work and making the mission's need for funds known. This method was part of the mission's policy of "full information and no solicitation." Three categories of funds were received by the mission: general undesignated funds, funds for support, and special funds. General undesignated funds were used to meet current expenses. Funds for support were divided into three subdivision: 50 percent went into the support pool, 20 percent to a mission passage fund that was used to cover missionary travel expenses to and from furloughs, and 30 percent went into a general fund used for such items as missionary housing, medical and administrative expenses, and social security payments. Special funds consisted of gifts designated for special projects and personal gifts sent directly to designated missionaries.

The case can also be distinguished from the present situation in that [REDACTED] existed between the donors and the missionaries in Peace, which is a factor to be considered in discerning the intent of the donors.

The taxpayer in Peace sent numerous checks to the mission, noting on each check the names of several missionaries in the lower left-hand corner. The remittance envelopes used by the

District Counsel, [REDACTED]

mission had check-off boxes for "Personal Gift (Transmission)" which was not checked by the taxpayer. The mission furnished a receipt for each check it received, listing the names of the missionaries designated on the checks, along with allocation of the total contribution to each of the subdivisions of the "funds for support" category in the percentages as outlined above. The taxpayer also made personal gifts to the missionaries for which no deduction was claimed.

After several years, one of the missionaries listed by the taxpayer left the mission. The taxpayer removed that missionary's name from subsequent checks to the mission and reduced the amount of his contribution. The taxpayer also requested that the mission no longer "break up" the amount sent for the support fund. The mission furnished the taxpayer with a pamphlet entitled "Missionary Maintenance" which gave a policy description of the division of funds by the mission and clearly indicated their intent to continue this manner of distribution, despite the taxpayers request.

The court in Peace found that the taxpayer's designation of missionaries to be supported by their donations was no more than a manifestation of the taxpayer's desire to have their donations credited to the support allowance of those individuals. The court also applied the standard enunciated in Rev. Rul. 62-113 and allowed the deduction, finding that the totality of the facts indicated that the taxpayer intended that the funds go into a common pool and be distributed as the mission saw fit, thus the donations were not earmarked and were not received pursuant to an understanding that they be used only for the missionaries indicated on the checks.

The [REDACTED] used by the Church is significantly different from the factual situation in Peace. Payments made under the [REDACTED] are solicited and received by the Church and made by the donors with the understanding that the payments will be sent onto the missionary [REDACTED]. The Church does not have full control over funds received subject to such an understanding.

Another case which has been raised by the Church in the past is Winn v. Commissioner, 595 F.2d 1060 (5th Cir. 1979). The facts of the case deal with funds raised by a congregation for a missionary that was the daughter of one of the members of the congregation. The funds raised were deposited directly into the missionary's personal bank account. We believe this case is inconsistent with, and may well have been overruled by, Davis.

The Church attorneys also rely on what we view as two different sets of revenue rulings. The first set is composed of

District Counsel, [REDACTED]

Rev. Rul. 66-79, 1966-1 C.B. 48; and, Rev. Rul. 68-484, 1968-2 C.B. 105. Under Rev. Rul. 66-79, contributions to a domestic charity that are intended to go to a foreign charity are deductible when the domestic charity has full control of the donated funds, and discretion as to their use, so as to insure that the funds will be used to carry out the domestic charity's functions and purposes. (Contributions to foreign charities are not deductible. See section 170(c)(2)(A).) Rev. Rul. 68-484 holds that amounts paid by a corporation for scholarships at, and grant-in-aids to, educational institutions described in section 170, a number of whose graduates were employed by the corporation, were deductible as charitable contributions. Each educational institution involved selected the recipients of the scholarships, and the recipients could utilize the educational benefits as they chose, free of any present or future obligations to the corporation. Both of these revenue rulings rely on the charitable organization's control over the donated funds and show that more is required for control than that the charity merely have the contribution in its hands for a time. As opposed to the Church attorneys' view, we think these two revenue ruling help show that the Church does not have sufficient control over payments made by [REDACTED] under the [REDACTED].

The second set of rulings cited by the Church's counsel all deal with expenditures made directly by a volunteer for the benefit of an individual designated by a charitable organization. This set of rulings is composed of Rev. Rul. 66-10, 1966-1 C.B. 47 (a deduction was allowed for unreimbursed expenses directly connected with providing food, housing, and clothing to hurricane evacuees referred to the taxpayer by a charitable organization); Rev. Rul. 69-473, 1969-2 C.B. 37, modified by Rev. Rul. 84-61, 1984-1 C.B. 39 (a deduction was allowed for unreimbursed expenses connected with rendering assistance to indigent unmarried pregnant women referred to the taxpayers by a charitable organization); and Rev. Rul. 70-519, 1970-2 C.B. 62, modified by Rev. Rul. 84-61, 1984-1 C.B. 39 (a deduction was allowed for unreimbursed expenses incurred by the taxpayer while engaged in recreational and social activities with delinquent juveniles referred to the taxpayer by a charitable organization).

[REDACTED] Under the [REDACTED], the missionary [REDACTED], [REDACTED], are providing services to the Church, and the [REDACTED] cannot deduct payments for expenses incurred by [REDACTED] in providing services to the Church.

Although we think that [REDACTED] contributions to [REDACTED] funds under the Church's [REDACTED] are clearly not

District Counsel, [REDACTED]

properly deductible, we need to point out that the Church's adoption of the "[REDACTED]" on [REDACTED] means that any litigation about the [REDACTED] would likely not be determinative for the current [REDACTED]. If we were to conclude that payments under the current program are also not deductible, as we well might, then we would be [REDACTED] with the Church over its [REDACTED]. Also, we think it would be inadvisable to put out a news release that contributions under the [REDACTED] are generally not deductible under section 170 because people have necessarily already made the contributions and they might reasonably question the Service's timing. We would be happy to discuss our memorandum with you or the [REDACTED] District.

GLENN R. CARRINGTON  
Assistant Chief Counsel  
(Income Tax and Accounting)

(signed) Michael D. Finley

By: \_\_\_\_\_  
Michael D. Finley  
Chief, Branch 3